

U.S.S.N. 09/038,894
STOUGHTON *et al.*
ELECTION OF SPECIES

The claims relate to the same generic concept of assessing or measuring cell activation in a subject and administering activation lowering therapy. The dependent claims specify ways of assessing cell activation, types of activation lowering therapy, and different diseases and treatments for diseases which may improve with such therapy. This subject matter does not warrant multiple patents.

What the Examiner has characterized as "species" are dependent claims directed to specific embodiments of the claimed subject matter. An inventive concept is based on the discovery that the level of activation of cells in microcirculation is predictive of outcomes for treatments of a wide variety of disorders and that lowering of cell activation can improve treatment outcomes. Assessment of activation and administration of activation lowering therapy is pivotal in many chronic and acute disease states. Cell activation status is of central importance in not only disease states, such as ischemia, infection, trauma, inflammatory diseases, but also to 'healthy' individuals. Cellular activation can be used as an indicator of therapeutic outcome and also as a therapeutic target.

Furthermore, there is no demonstrable burden on the Office to examine and search for the broad concepts, the concept of assessing cell activation as a predictor of disease outcome and administering cell activation therapy without reference to particular treatments, diseases, methods of assessment and particular therapy. Accordingly claims that do not read on the elected species are retained until a decision regarding the patentability of independent claims 10 and 32 is reached.

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In view of the above, examination of the application are respectfully requested.

Respectfully submitted,
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